



July 12, 1999

Ms. Tina Plummer
Open Records Coordinator
Texas Department of Mental Health Mental Retardation
P.O. Box 12668
Austin, Texas 78711-2668

OR99-1924

Dear Ms. Plummer:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 125655.

The Texas Department of Mental Health and Mental Retardation (the "department") received a request for seven categories of information for the period from 1994 to the present. You contend that one category of requested information, sexual and/or physical abuse reports for Brenham State School, is excepted from disclosure under section 552.101 of the Government Code in conjunction with various state statutes and regulations.¹ We have considered the exception you claim and have reviewed a representative sample of the documents at issue.²

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 48.101 of the Human Resources Code pertains to disclosure of information about reports of abuse, neglect, or exploitation of elderly and disabled persons in certain facilities. Section 48.101 reads in part as follows:

(a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under . . . chapter [48 of the Human Resources Code];

¹Because you have not objected to the other six items of the request, we assume that you have released the information responsive to those six items.

²We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

(2) the identity of the person making the report; and


(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department rule and applicable federal law.

You state that each of the submitted documents is "a report, record, communication, or working paper used or developed in an investigation made under chapter 48 of the Human Resources Code." Based on your representation, we agree that the submitted information is confidential pursuant to section 48.101(a) of the Human Resources Code.³ See Hum. Res. Code § 48.082(a); *see also id.* § 48.002 (definitions). Consequently, the information must not be disclosed to the public, except for a purpose consistent with chapter 48 of the Human Resources Code, or as provided by department rule or federal law. *See id.* § 48.101(b); *but see id.* § 48.101(c), (d), (e), (f) (permitting release of confidential information in certain circumstances).

Because we are able to resolve this matter under section 48.101 of the Human Resources Code, we do not address your other arguments against disclosure. We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,


Karen E. Hattaway
Assistant Attorney General
Open Records Division

KEH/ch

³Because the submitted documents are confidential by statute, we need not consider whether the department's request for clarification tolled the requirement that a governmental body seek a decision from this office no later than the tenth business day after it receives a request for information. *See Gov't Code* §§ 552.222, .301; Open Records Decision Nos. 333 (1982), 150 (1977) (presumption of openness overcome by showing that information is confidential by statute).

Ref: ID# 125665

Encl: Submitted documents

cc: Mr. Andrew Rubenstein
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(w/o enclosures)